PD-0322-21

PD-0322-21
COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
Transmitted 5/7/2021 10:11 AM
Accepted 5/12/2021 10:40 AM
DEANA WILLIAMSON
CLERK

PD NO. _____

TO THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
5/12/2021
DEANA WILLIAMSON, CLERK

SAMUEL CRAWFORD PATTERSON, Appellant

v.

THE STATE OF TEXAS, Appellee

Appeal from Brazos County, Trial Cause Number 17-00251-CRF-361
No. 10-19-00243-CR

* * * * *

STATE'S PETITION FOR DISCRETIONARY REVIEW

* * * * *

RYAN CALVERT
Assistant District Attorney
Bar I.D. No. 24036308

300 E. 26th St. Suite 310
Bryan, Texas 77803
rcalvert@brazoscountytx.gov
(979)361-4320 (Telephone)
(979)361-4368 (Fax)

ORAL ARGUMENT REQUESTED

IDENTITY OF JUDGE, PARTIES, AND COUNSEL

* The parties to the trial court's judgment are the State of Texas and Appellant, Samuel Patterson.

* The trial judge was Hon. Steve Smith, Presiding Judge of the 361st Judicial District Court of Brazos County, Texas.

* Counsel for Appellant at both trial and appeal was Lane Thibodeaux, Law Office of Lane Thibodeaux, P.O. Box 523, Bryan, Texas 77806.

* Counsel for the State at trial were Brazos County Assistant District Attorneys Ryan Calvert and Ashley Martin, 300 E. 26th St., Suite 310 Bryan, Texas 77803.

* Counsel for the State before the Court of Appeals were Brazos County Assistant District Attorneys John Brick and Ryan Calvert, 300 E. 26th St., Suite 310 Bryan, Texas 77803.

* Counsel for the State before this Court is Ryan Calvert, Assistant District Attorney, 300 E. 26th St. Suite 310, Bryan, Texas 77803.

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

STATUTES

NO. PD-_____

TO THE
COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

SAMUEL CRAWFORD PATTERSON
VS.
THE STATE OF TEXAS

STATE'S PETITION FOR DISCRETIONARY REVIEW

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

COMES NOW the State of Texas, by and through its District Attorney for Brazos County, and respectfully urges this Court to grant discretionary review of the above named cause, pursuant to the rules of appellate procedure.

STATEMENT REGARDING ORAL ARGUMENT

This case involves the finding of abuse of discretion with respect to a trial court's denial of a motion to suppress evidence. Because of the significant issues raised by the court of appeals' opinion in this matter, and because this is a case of first impression in Texas, the State believes that oral argument would be helpful to this Court in deciding the merits of its Petition for Discretionary Review.

STATEMENT OF THE CASE

Appellant, Samuel Patterson, was charged by indictment with two counts of Possession of a Controlled Substance, one in Penalty Group 1, less than 1 gram and the other from Penalty Group 1-A, less than 20 abuse units, both State Jail

Felonies. (CR at 4); TEX. HEALTH & SAFETY CODE § 481.113 & 481.1121, respectively. Appellant filed an Amended Motion to Suppress on September 22, 2017. (CR 12-27). The trial court conducted an evidentiary hearing on Appellant's Amended Motion to Suppress, as well as joining five other co-defendants' motions to suppress, on September 29, 2017. (RR Vols. 2 & 6).

The trial court denied Appellant's Amended Motion to Suppress by written order on July 17, 2018. (CR 162).

Appellant entered an open plea of guilty and elected for punishment to be assessed by the trial court. (2 RR 9-11). The trial court assessed Appellant's punishment at two years' confinement in State Jail, but probated that sentence for five years with various conditions as described in the judgment. (CR 165-168, and 189-192).

Notice of appeal was filed on July 3, 2019. (CR 170-171). Appellant did not request, and the trial court did not conduct, any post-conviction hearings.

STATEMENT OF PROCEDURAL HISTORY

On December 9, 2020, in an unpublished opinion, the Tenth Court of Appeals reversed the judgment of the trial court as to Appellant's conviction for Possession of a Controlled Substance. *Patterson v. State*, No. 10-19-00243-CR, 2020 Tex. App. LEXIS 9596 (Tex. App. -- Waco Dec. 9, 2020).

On January 4, 2021, the State filed a Motion for Rehearing. On April 28, 2021, the Tenth Court of Appeals denied the State's Motion for Rehearing.

The State's Petition for Discretionary Review is timely filed with this Court on or before May 28, 2021. TEX. R. APP. P. 68.2(a).

GROUNDS FOR REVIEW

1. Whether the search warrant was facially valid because it incorporated the warrant affidavit, which specifically listed Appellant's room as containing narcotics.

2. Whether the Tenth Court of Appeals' opinion holding that the trial court abused its discretion in denying Appellant's motion to suppress, improperly ignored the requirement set forth in *Kelly v. State*, 204 S.W.23d 808, 818-819 (Tex. Crim. App. 2006) that a trial court's decision concerning a question of fact must be upheld if some support exists in the record for that decision.

3. Whether the Tenth Court of Appeals failed to consider and address the issue of whether the trial court could have reasonably determined probable cause existed for the entire house in which Appellant lived.

REASONS FOR REVIEW

1. The search warrant affidavit specifically listed Appellant's room number in a fraternity house, along with a description of the illegal contraband seen therein. Further, the search warrant itself incorporated the supporting affidavit for all

purposes. However, the Tenth Court of Appeals ruled that the warrant was facially invalid for failing to describe Appellant's particular room, despite acknowledging that the warrant incorporated the supporting affidavit, which did describe Appellant's room.

2. In an apparent case of first impression in Texas, the Tenth Court of Appeals has ruled that a fraternity house is a multi-unit dwelling, akin to an apartment building or dormitory, thereby requiring a warrant to specify what rooms are to be searched, despite evidence in the record supporting the trial court's implicit finding that the house was a single residence, thereby rendering the warrant sufficient.

This Court has previously ruled that, when resolving questions of fact in a hearing on a motion to suppress, a trial court is entitled to almost total deference, and the trial court's ruling must stand if it is supported by the record.

3. Further, even if the fraternity house constitutes a multi-unit dwelling, and even if Appellant's room had not been listed in the search warrant, evidence in the record supported a finding that probable cause existed to search the entire house, thereby validating a search warrant for the whole structure. In making its ruling suppressing evidence, the Tenth Court of Appeals failed to acknowledge or address the issue of whether probable cause existed to search the whole house, despite that issue being briefed and argued to the Court.

STATEMENT OF FACTS

Appellant was indicted for two counts of the State Jail Felony offense of Possession of a Controlled Substance. (CR 4); Tex. Health & Safety Code § 481.113 & 481.1121. Appellant filed a Motion to Suppress Evidence on September 22, 2017. (CR 12-27). On September 29, 2017, the trial court conducted an evidentiary suppression hearing on Appellant's motion, as well as on similar motions filed by Appellant's five co-defendants. (2 RR 2). On July 17, 2018, the trial court denied Appellant's motion to suppress. (CR 162).

Appellant pled guilty and elected to have the trial court assess his punishment. (2 RR 9-11). Following a punishment hearing on June 13, 2019, the trial court sentenced Appellant to two years' confinement in a state jail facility, but probated that sentence for five years, with various conditions described in the judgment. (CR 165-168, 189-192).

During the hearing on the Motion to Suppress, Appellant testified that he was a member of the Sigma Nu fraternity at Texas A&M University. (2 RR 13). Appellant lived at the Sigma Nu fraternity house. (2 RR 14). Each fraternity brother living at the house had a room. (2 RR 15). Only fraternity members lived at the house. (2 RR 13-14). The house consisted of approximately 25 bedrooms. (2 RR 14-15, 237). The house was not open to the public. (2 RR 16). Appellant testified that there is one front door to the house, which fraternity members kept

locked. (2 RR 17). Appellant conceded that, just as any other private residence, non-residents were not permitted to enter the house without permission. (2 RR 16-18). Appellant agreed that, should a non-resident walk into the house, he would be confronted by fraternity members, even if the door were left unlocked. (*Id.*). Residents in the house shared two large common bathrooms. (2 RR 19, 21, 69, 225, 244). Additionally, the house had living rooms, fraternity meeting rooms, and a single kitchen. (2 RR 14-15, 19-26), (6 RR 6-14, 24-25). Mail was delivered to the house, rather than to individual rooms. (2 RR 20). Appellant's lease (6 RR 60-67), as well as those of other fraternity members, were for the house itself at 550 Fraternity Row in College Station, rather than for individual rooms. (2 RR 12, 35), (6 RR 52-83).

On August 20, 2016, police and medics responded to multiple emergency calls regarding a drug overdose at the Sigma Nu house. (2 RR 40-41, 51, 105-106), (6 RR 28-42). One 911 call originated from the Sigma Nu house itself. (6 RR 32-37). Another call was from a medical center, wherein medical staff informed police that "friends of [the overdose victim]" called the hospital concerning the overdose, and stated that "they did not want to call 911 because they didn't want to get in trouble for the illicit drugs." (6 RR 37). A third 911 call was from a woman identifying herself as the sister of a Sigma Nu member, stating that her brother informed her that a resident had overdosed on heroin, but that her brother was not

calling 911 because he was "too fucked up to think straight," and said of the fraternity members, "they're all taking obviously illegal drugs." (6 RR 29-31, 38-39).

When police arrived, they found a fraternity member, later identified as Anton Gridnev, unconscious and apparently deceased in the entryway of the house. (2 RR 42-43, 54, 109, 158). Despite Gridnev exhibiting no signs of life, police and medics began life-saving measures. (2 RR 44-45, 54, 109, 158). Officers noted that Gridnev's body had been moved to its location from elsewhere in the house. (2 RR 48, 118). Several officers described their concern that others in the house, where a party had occurred, may have taken the same substance as Gridnev and could be in danger of overdose. (2 RR 53-55, 194, 201-202).

Thus, police swept through the house looking for people. (2 RR 62-65, 69, 120, 166-67, 169, 191-93, 200-02). During that process, officers noticed that narcotics and drug paraphernalia were plainly visible in many rooms in the house, including 10 bedrooms and a common room. (2 RR 71-74, 206), (State's Exhibit 1 at 6 RR 22-24). Because officers were looking for people, rather than physical evidence, they did not seize any drugs or other contraband as they saw them, choosing instead to leave them in place. (2 RR 73, 209, 224).

Later in the morning, a narcotics investigator arrived and was shown which rooms contained plainly visible contraband. (2 RR 219-20). The investigator then

drafted a search warrant affidavit and presented it to a judge. (2 RR 224), (State's Exhibit 1 at 6 RR 16-26). The affidavit described a total of twelve different parts of the house which had visible evidence of narcotics activity:

- Front entry way – the body of Anton Gridnev;
- Downstairs theater room – apparent THC concentrate and assorted paraphernalia;
- Room 104 – suspected cocaine with assorted paraphernalia;
- Room 105 – marijuana residue with paraphernalia;
- Room 213 – crushed blue powder, marijuana, and assorted paraphernalia;
- **Room 216 (Appellant's room) – suspected cocaine and baggies with residue inside;**
- Room 214 – marijuana residue and paraphernalia;
- Room 210 – marijuana residue;
- Room 207 – glass smoking bong;
- Room 202 – suspected Psilocybin mushrooms;
- Room 203 – marijuana residue and paraphernalia;
- Room 208 – glass pipe containing burned marijuana, and paraphernalia

(State's Exhibit 1 at 6 RR 16-26) (emphasis added).

The reviewing judge signed a search warrant authorizing the search of the entire Sigma Nu house, and also incorporating the contents of the affidavit "for all purposes." (State's Exhibit 1 at 6 RR 8, 26).

Following the denial of Appellant's Motion to Suppress, the trial court did not enter written findings of fact and conclusions of law.

ARGUMENT AND AUTHORITIES

The Tenth Court of Appeals' ruling that the search warrant was facially invalid ignored the fact that the search warrant incorporated its

supporting affidavit "for all purposes." That affidavit contained, within its four corners, a description of all of the places contraband was observed, including Appellant's specific room.

The Tenth Court of Appeals ruled that the search warrant, which led to the seizure of narcotics from Appellant's room in a fraternity house, was an overbroad general warrant and failed to describe with particularity the place to be searched. *Patterson v. State*, No. 10-19-00243-CR, 2020 Tex. App. LEXIS 9596 *15-*16 (Tex. App. – Waco Dec. 9, 2020).

The search warrant in question described the place to be searched as the house in general, but also contained the following language:

> Whereas, the affiant, whose name appears on the affidavit attached hereto is a peace officer or special investigator under the laws of Texas and did heretofore this day subscribe and swear to said affidavit before me (**which said affidavit is here now made a part hereof for all purposes and incorporated herein as if written verbatim within the confines of this Warrant**…).

(State's Exhibit 1 at 6 RR 16-26) (emphasis added).

In its opinion, the Tenth Court of Appeals acknowledged that the search warrant incorporated the supporting affidavit. *Patterson,* 2020 Tex. App. LEXIS 9596, at *13-15. While the affidavit's initial description of the suspected place references the house in its entirety, the affidavit's synopsis of the investigation specifically describes twelve different rooms or areas of the fraternity house wherein evidence of illegal activity was observed, including a reference to

Appellant's room (Room 216), in which suspected cocaine and baggies were seen. (State's Exhibit 1 at 6 RR 16-26).

Thus, Appellant's room, is specifically described within the four corners of the affidavit as containing suspected contraband. That affidavit was incorporated into the warrant "for all purposes" and without limitations. As explained below, the reference to Appellant's specific room was therefore incorporated into the warrant itself.

When a search warrant affidavit is incorporated into a search warrant, it becomes a part of, and can be used to aid the description in, the search warrant. *Green v. State*, 799 S.W.2d 756, 760 (Tex. Crim. App. 1990) (citing *Phenix v. State*, 488 S.W.2d 759 (Tex. Crim. App. 1972)). The reason for that rule underscores the Court's recognition that a factual affidavit, upon which the instrument of the search or seizure must succeed or fail, is usually more specific and meticulous in reciting information known to an affiant than is the warrant which follows. *Green v. State*, 799 S.W.2d at 760.

In *Rios v. State*, for example, a clerical error resulted in a search warrant being executed on a home, despite the face of the warrant itself only authorizing the search of a vehicle, rather than a residence. 901 S.W.2d 704, 705 (Tex. App.-San Antonio 1995, no pet.). The court considered the following question in its analysis, "…is it correct to consider the affidavit as well as the warrant, or is the

standard of review limited to the warrant alone without the affidavit?"

The court in *Rios* noted the following:

> *It is well-settled law in Texas that the description contained in the affidavit limits and controls the description contained in the warrant.* (Citing *Madrid v. State,* 595 S.W.2d 106, 107 (Tex. Crim. App. 1979) cert. denied, 449 U.S. 848 (1980) and *Cantu v. State,* 557 S.W.2d 107, 108-09 (Tex. Crim. App. 1977).
>
> ...
>
> *[The] warrant and the attached affidavit should be considered together as defining the place to be searched, but the description in the affidavit controls over the language of the warrant itself.* (Citing *State v. Saldivar,* 798 S.W.2d 872, 873 (Tex. App. – Austin 1990, pet. ref'd).

Rios v. State, 901 S.W.2d at 706.

The court in *Rios* ruled that, even though the warrant itself did not even mention a residence to be searched, the fact that the supporting affidavit, which was incorporated into the warrant, adequately described the home rendered the search warrant valid. *Id.* at 707.

In Appellant's case, a description of Appellant's specific room, and the contraband observed in it, were contained within the four corners of the affidavit supporting the search warrant. *See State v. Jordan*, 342 S.W.3d 565, 569 (Tex. Crim. App. 2011) (holding that the magistrate may interpret the affidavit in a non-technical, common-sense manner and may draw reasonable inferences solely from the facts and circumstances contained within the affidavit's four corners.).

The entirety of that affidavit was then incorporated into the search warrant "for all purposes." Thus, Appellant's room was specifically listed in the search warrant itself, thereby rendering the warrant sufficiently particular as it applies to Appellant.

The only argument that the search warrant does not particularly describe Appellant's room rests on the fact that the description of Appellant's room was contained in the body of the affidavit rather than the paragraph on the affidavit's first page describing the "suspected place." Such an argument constitutes reading the affidavit in a "hyper-technical," rather than the "common sense" manner which the law requires.(*See Rodriguez v. State*, 232 S.W.3d 55, 59 (Tex. Crim. App. 2007) ("The Supreme Court has repeatedly reminded reviewing courts that they should not invalidate the warrant by interpreting the affidavit in a hyper-technical, rather than a commonsense, manner."). The Tenth Court of Appeals, while acknowledging that the warrant incorporated the affidavit, failed to address the fact that Appellant's particular room was described within the four corners of the affidavit, and therefore, the warrant itself.

Good Faith

The court in *Rios* further noted that the evidence seized in that case pursuant to a defective search warrant was admissible under the good-faith exception listed in Tex. Code Crim. Proc. art. 38.23(b). *State v. Rios*, 901 S.W.2d at 707-08.

Similar reasoning applies to Appellant's case.

Art. 38.23(b) states that the exclusionary rule of Art. 38.23(a) should not apply if the evidence was obtained by a law enforcement officer acting in objective good faith reliance upon a warrant issued by a neutral magistrate based upon probable cause. Tex. Code Crim. Proc. art. 38.23(b).

In Appellant's case, the contraband in individual rooms, including Appellant's, was observed during initial sweeps through the fraternity house, wherein police were looking for additional people who might be in medical distress due to a drug overdose such as the one suffered by Anton Gridnev. (2 RR 62-65, 69, 120, 166-67, 169, 191-93, 200-02). Because officers were looking for people, rather than physical evidence, they did not seize any drugs or other contraband as they saw them, choosing instead to leave them in place and secure a search warrant. (2 RR 73). Had the officers seized the illegal items then and there, then no basis to suppress that evidence would exist.

To suppress evidence that could legally have been seized without a warrant, based upon errors contained within a search warrant that officers elected to obtain, contradicts the sole purpose of the exclusionary rule: deterrence of police misconduct. *See United States v. Leon*, 468 U.S. 897, 104 (1984). In *Rios*, the court quoted the United States Supreme Court in *Leon*, stating:

> *When law enforcement officers have acted in objective good faith or their transgressions have been minor, the magnitude of the benefit*

> *conferred on such guilty defendants (suppression of evidence) offends basic concepts of the criminal justice system.*

Rios v. State, 901 S.W.2d at 707.

In Appellant's case, officers left in place evidence that they could lawfully have seized, opting instead to secure a search warrant. That the search warrant affidavit, and therefore the warrant itself, contained a description of Appellant's residence in the body of the document, rather than in the initial description of the suspected place, does not constitute a transgression so egregious on the part of police that it warrants suppression of evidence.

The Tenth Court of Appeals' holding that the trial court abused its discretion by denying Appellant's Motion to Suppress failed to afford the trial court appropriate deference in deciding that the Sigma Nu house operated as a single residence, rather than a multi-unit dwelling.

A trial court's ruling on a motion to suppress must be reviewed in the light most favorable to the ruling. *State v. Kelly*, 204 S.W.3d 808, 818 (Tex. Crim. App. 2006). A trial court's decision concerning a question of fact must be upheld if some support for that decision exists in the record. *Id.* When a trial court does not make findings of fact, courts of appeals must assume that the trial court made implicit findings that support its ruling, as long as they are supported by the record. *Torres v. State*, 182 S.W.3d 899, 902 (Tex. Crim. App. 2005).

In Appellant's case, the trial court did not make findings of fact or conclusions of law. Thus, under *Kelly* and *Torres*, the trial court's denial of

Appellant's motion to suppress must be upheld if there is any support for that ruling in the record. One such basis for that ruling would be if the Sigma Nu fraternity house constituted a single residence, rather than a multi-unit dwelling.

If the Sigma Nu house was a single residence, rather than something akin to an apartment or dormitory building as Appellant claims, then police were lawfully in position to observe the illegal narcotics and other contraband which were pervasive throughout house and the search warrant for the house was valid. Consequently, the drugs in Appellant's room were admissible.

When an emergency call is made by individuals who own or control the premises to which police are summoned, then those individuals implicitly consent to a search of the premises reasonably related to the incident police were called to address. *Brown v. State*, 856 S.W.2d 177, 182 (Tex. Crim. App. 1993). In *Brown*, the defendant called 911 reporting that he found his wife dead in their garage. *Id.* at 179. Police then searched the interior of the house for evidence related to the death, ultimately finding evidence implicating the defendant. *Id.* Brown moved to suppress the evidence found in his home. *Id.* at 178-179. This Court ruled that, by calling 911, the defendant gave implicit consent to police entering his home and conducting a reasonable investigation. *Id.* at 182.

Similarly, in *Johnson v. State*, the defendant called 911 and reported that she had shot her husband in self-defense. 226 S.W.3d 439, 440 (Tex. Crim. App.

2007). Responding officers made a total of three separate entries into the defendant's home to search for evidence, which ultimately resulted in proof that the defendant murdered her husband. *Id.* at 441-445. While police were at the defendant's home, she never told them to leave. *Id* at 441. As in *Brown*, the Court of Criminal Appeals ruled that the defendant's 911 call equated to consent for police to come into her home and conduct an investigation, stating:

> …by making [a 911] call, surely the objectively reasonable homeowner envisions that the responding police will enter his home, view the scene, take pictures of that scene, and make a cursory search for relevant evidence directly relating to the homeowner's emergency call.

Id. at 447.

Further, the Court stated that "the lawfulness of a search is not determined by the number of times that officers cross the threshold. Rather, it is whether the officers are engaged in objectively reasonable conduct under the circumstances." *Id.* at 445. *See also Villanueva v. State*, No. 08-08-00140-CR, 2010 Tex. App. LEXIS 1857 * 12- - 13 (Tex. App. -- El Paso Mar. 17, 2010) (not designated for publication) (holding that an officer who responded to a 911 call concerning a medical emergency properly entered a house and searched for narcotics); *See also Nordstrom v. State*, No. 03-12-00012-CR, 2014 Tex. App. LEXIS 4920 *9 (Tex. App. -- Austin May 8, 2014, no pet.) (not designated for publication) (holding that a trial court properly denied a motion to suppress when police responding to a 911

call about a death searched a home for evidence relating to the death).

Turning to Appellant's case, only members of the Sigma Nu fraternity had access to the fraternity house. (2 RR 16-19). All residents had the ability to exclude outsiders from the entire home. *Id.* On August 20, 2016, the residents of the Sigma Nu house, including Appellant, called 911 and requested an emergency response to a suspected narcotics overdose. (2 RR 40-41, 51, 105-106); (6 RR 32-37). Police found the overdose victim inside the doorway of the house, having clearly been moved there from elsewhere in the home. (2 RR 42, 48, 66, 118). The victim did not appear to be alive. (2 RR 54, 109, 158). A party had clearly been taking place, and numerous people were at the fraternity house. (2 RR 164, 191-192). Police feared that, if one person overdosed on a substance, others may have taken the same substance and could be in danger. (2 RR 55, 64, 70, 73, 160, 274-275). The trial court was thus within its discretion ruling that, under the emergency doctrine, police reasonably swept through the house ensuring that no other occupants were in distress.

Moreover, under *Brown*, *Johnson*, and *Villanueva*, by calling 911, the occupants of the fraternity house, including Appellant, implicitly consented to police responding to the home and conducting a reasonable investigation into the overdose and death of Anton Gridnev. The residents' consent was never revoked. (2 RR 103, 123, 202). Nor is there any evidence in the record that the consent was

limited in any way to a particular part of the house.

The record supported the trial court's implicit finding that the Sigma Nu house was a single residence. When the house residents invited police in to respond to the death, the officers, as those in *Brown*, *Johnson*, and *Villanueva* could conduct a reasonable investigation to that death in the residence where the body was found, as opposed to treating it as 25 separate homes.

Therefore, the trial court was within its discretion in implicitly finding that:

1) The Sigma Nu house constituted a single residence;

2) The occupants of that residence, including Appellant, implicitly consented for police to enter the home and conduct an investigation;

3) That consent was never revoked or limited;

4) That police actions in sweeping through the house were objectively reasonable, both under the emergency doctrine, and as part of their consensual investigation into the death of Anton Gridnev; and

5) That the search warrant for the house was facially valid, regardless of whether Appellant's room was particularly described.

Consequently, the Tenth Court of Appeals erroneously found that the trial court abused its discretion in denying Appellant's motion to suppress.

> **Even if the Sigma Nu fraternity house constituted a multi-unit dwelling, and even if Appellant's room was not described with sufficient particularity in the search warrant, a reasonable magistrate could have found that probable cause existed for the entire house, thereby alleviating the need for Appellant's room to be particularly described.**

The Tenth Court of Appeals ruled that the fraternity house was a multi-unit dwelling, and therefore a search warrant that did not describe which individual rooms to be searched was facially invalid as a general warrant. *Patterson*, 2020 Tex. App. LEXIS 9596, at *15-*16.

Beyond ignoring the previously discussed issues, the Tenth Court of Appeals also failed to address a third issue: On appeal, the State pointed out that the particularity requirement of search warrants does not always apply:

> the Fourth Amendment particularity requirement analysis for multiple dwelling residences did not apply where "(1) the officer knows there are multiple units and believes there is probable cause to search each unit, or (2) the targets of the investigation have access to the entire structure." (citing *United States v. Johnson*, 26 F. 3d 669, 691 (7th Cir. 1994))

(State's Brief, pp. 36-37).

In Appellant's case, the search warrant affidavit described evidence of criminal activity visible in 10 of 25 bedrooms, as well as two common areas. Thus, a reasonable magistrate could conclude that probable cause existed for the entire house, which would render a search warrant for the house as a whole valid, even if Appellant's individual room were not listed specifically in the warrant.

Despite this issue being briefed and argued, the Tenth Court of Appeals did not acknowledge, or otherwise address it in the court's opinion.

Standing

In its opinion, the Tenth Court of Appeals stated, "At trial and on appeal, the

parties dispute whether Patterson has standing to challenge the search of his room at the fraternity house." *Patterson v. State*, 2020 Tex. App. LEXIS 9596, at *6. As noted during oral argument with the Tenth Court of Appeals, the State has *never disputed* Appellant's standing to move to suppress evidence in this case. (*See* Oral Argument at *https://www.youtube.com/watch?v=JBI3RfWCMYw* -- at 2:10:24 – 2:13:00). However, the State never contested that Appellant had standing[1]. Rather, on appeal, the State merely noted that Appellant only claimed a privacy interest (and therefore standing) in Room 216, but then sought to excise from the search warrant affidavit any reference to nine other bedrooms in the fraternity house to which he claimed no standing. (*See* Oral Argument at *https://www.youtube.com/watch?v=JBI3RfWCMYw* -- at 1:55:04).

That contradiction was present, even in Appellant's own testimony at the suppression hearing. Appellant testified, "Room 216 was my home." (2 RR 19). But when asked whether the hallways were part of his home, Appellant responded, "I imagine that was part of the common room." (2 RR 19).

Appellant then conceded that he, and every other member of the fraternity, had the right to exclude people, not just from their individual bedrooms, but from

1 At the suppression hearing, the State *did not agree to stipulate* that Appellant had standing. (2 RR 9 – as corrected). That strategic decision forced Appellant to testify in order to establish standing. However, once Appellant established a privacy interest in the house, the State never *disputed* his standing to challenge a search of the house.

the entire house[2]. (2 RR 14-18)

The significance of this contradiction is that, if Appellant only claims standing to challenge a search of Room 216, then even if officers did not legally see the drugs in Appellant's room during their initial sweeps through the house, the remedy would be to excise any reference to Room 216 from the search warrant affidavit, as opposed to excising any reference to all 10 bedrooms described in the search warrant affidavit as Appellant seeks.

In that event, a magistrate would still be left with a search warrant affidavit listing evidence observed in two common areas and nine other bedrooms – thereby creating probable cause to search the entire house. In its opinion, the Tenth Court of Appeals did not address this issue.

PRAYER

Wherefore, the State of Texas prays that the Court of Criminal Appeals grant this Petition for Discretionary Review, that this case be set for submission, and that after submission, this Court reverse the judgment of the Tenth Court of Appeals.

Respectfully submitted,

JARVIS PARSONS
DISTRICT ATTORNEY
BRAZOS COUNTY, TEXAS

2 That contradiction is a key distinction between Appellant's case and the case on which he most heavily relies, *State v. Rodriguez,* 521 S.W.3d 1 (Tex. Crim. App. 2017). The dorm resident in *Rodriguez* would certainly not have the right Appellant claimed in this case -- to exclude people from the entire dorm building.

Ryan Calvert
Assistant District Attorney
State Bar No. 24036308

CERTIFICATE OF COMPLIANCE WITH TEX. R. APP. P. 9.4

I do hereby certify that the foregoing document has a word count of 4,423 based on the word count program in Word 2013.

Ryan Calvert
Assistant District Attorney

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing State's Petition for Discretionary Review was emailed Lane Thibodeaux, Attorney for Appellant, at lanet1@msn.com, and to the State Prosecuting Attorney at information@spa.texas.gov on this 7th day of May, 2021.

Ryan Calvert
Assistant District Attorney

APPENDIX
Court of Appeals's Opinion

Cited
As of: January 14, 2021 3:15 PM Z

Patterson v. State

Court of Appeals of Texas, Tenth District, Waco

December 9, 2020, Opinion Delivered; December 9, 2020, Opinion Filed

No. 10-19-00243-CR

Reporter
2020 Tex. App. LEXIS 9596 *

SAMUEL CRAWFORD ***PATTERSON***, Appellant v. THE STATE OF TEXAS, Appellee

Notice: PLEASE CONSULT THE TEXAS RULES OF APPELLATE PROCEDURE FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: [*1] From the 361st District Court, Brazos County, Texas. Trial Court No. 17-00251-CRF-361.

Disposition: Reversed and remanded.

HOLDINGS: [1]-A search warrant failed to meet the particularity requirement of the Fourth Amendment and *Tex. Code Crim. Proc. Ann. art. 18.01(c)* because neither the affidavit in support of the search warrant nor the search warrant itself identified defendant's room within the specified ***Fraternity House*** as a place to be searched. Because defendant had a reasonable expectation of privacy in his room within the ***Fraternity House***, the description of the place to be searched in this case violated the particularity requirement of the Fourth Amendment; the description of the place to be searched in this case—the entire ***Fraternity House***—was too broad and, thus, was deficient as a general warrant. Thus, the trial court abused its discretion by denying defendant's motion to suppress evidence seized from his room within the ***Fraternity House*** on this basis.

Outcome
Judgment reversed and case remanded.

Core Terms

fraternity house, Fraternity, searched, search warrant, trial court, door, rooms, colored, dorm, expectation of privacy, motion to suppress, sweep, motion to suppress evidence, privacy interest, law enforcement, dormitory room, seizures, effects, windows, seized

Case Summary

Overview

LexisNexis® Headnotes

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion

Criminal Law & Procedure > ... > Standards of Review > De Novo Review > Motions to Suppress

Ryan Calvert

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Suppression of Evidence

Criminal Law & Procedure > ... > Standards of Review > Deferential Review > Credibility & Demeanor Determinations

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > Evidence

HN1[] Standards of Review, Abuse of Discretion

The appellate courts review the trial court's ruling on a motion to suppress evidence for an abuse of discretion, using a bifurcated standard. The appellate courts give almost total deference to the trial court's findings of historical fact that are supported by the record and to mixed questions of law and fact that turn on an evaluation of credibility and demeanor. The appellate courts review de novo the trial court's determination of the law and its application of law to facts that do not turn upon an evaluation of credibility and demeanor. When the trial court has not made a finding on a relevant fact, the reviewing courts imply the finding that supports the trial court's ruling, so long as it finds some support in the record. The appellate courts will uphold the trial court's ruling if it is reasonably supported by the record and is correct under any theory of law applicable to the case.

Criminal Law & Procedure > Trials > Witnesses > Credibility

Evidence > Weight & Sufficiency

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Suppression of Evidence

Criminal Law & Procedure > Juries & Jurors > Province of Court & Jury > Credibility of Witnesses

HN2[] Witnesses, Credibility

When ruling on a motion to suppress evidence, the trial judge is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given their testimony. When reviewing a trial court's ruling on a motion to suppress, the appellate courts view all the evidence in the light most favorable to the ruling.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Criminal Law & Procedure > Search & Seizure > Standing

HN3[] Search & Seizure, Scope of Protection

To challenge a search and seizure under the United States Constitution, the Texas Constitution, or the Texas Code of Criminal Procedure, a party must first establish standing. The defendant who challenges the search has the burden to establish standing.

Constitutional Law > ... > Case or Controversy > Standing > Particular Parties

Criminal Law & Procedure > Search & Seizure > Expectation of Privacy

HN4[] Standing, Particular Parties

A defendant may establish standing through an expectation-of-privacy approach or an intrusion-upon-property approach.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Criminal Law & Procedure > Search & Seizure > Expectation of Privacy

Criminal Law & Procedure > Search & Seizure > Governmental Action Requirement

HN5[] Search & Seizure, Scope of Protection

Regarding the search of a dormitory room, the Fourth Amendment guarantees the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. *U.S. Const. amend. IV*. The central concern underlying the Fourth Amendment has remained the same throughout the centuries; it is the concern about giving police officers unbridled discretion to rummage at will among a person's private effects. A Fourth Amendment claim may be raised on a trespass theory of search (one's own personal effects have been trespassed), or a

privacy theory of search (one's own expectation of privacy was breached). If the government obtains information by physically intruding on persons, houses, papers, or effects, a trespass search has occurred. If the government obtains information by violating a person's reasonable expectation of privacy, regardless of the presence or absence of a physical intrusion into any given enclosure, a privacy search has occurred. A search, conducted without a warrant, is per se unreasonable, subject to certain jealously and carefully drawn exceptions.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Criminal Law & Procedure > ... > Warrantless Searches > Consent to Search > Third Party Consent

HN6 **Search & Seizure, Scope of Protection**

The physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed. Of course, Fourth Amendment protections of the home are not limited to houses. While a landlord may have limited authority to enter to perform repairs, a landlord does not have the general authority to consent to a search of a tenant's private living space. Nor may a hotel clerk validly consent to the search of a room that has been rented to a customer.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Education Law > ... > Search & Seizure > School Official Searches > Reasonableness Test

Criminal Law & Procedure > Search & Seizure > Expectation of Privacy

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > School Searches

HN7 **Search & Seizure, Scope of Protection**

As a general matter, a dormitory room is analogous to an apartment or a hotel room. It certainly offers its occupant a more reasonable expectation of freedom from governmental intrusion than does a public telephone booth. Courts have widely agreed that a dorm room is a home away from home. Dorm personnel can—by virtue of contract—enter dorm rooms and examine, without a warrant, the personal effects of students that are kept there in order to maintain a safe and secure campus, or to enforce a campus rule or regulation; the students nevertheless enjoy the right of privacy and freedom from an unreasonable search or seizure. The student is the tenant, the college the landlord. A student enjoys the same Fourth Amendment protection from unreasonable searches and seizures in her dormitory room as would any other citizen in a private home.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > School Searches

HN8 **Search & Seizure, Scope of Protection**

In the context of protection from unreasonable searches and seizures under the Fourth Amendment, both a dorm room and a room at a ***fraternity house*** are considered to be a home away from home for the college students that occupy the rooms. Both have shared community spaces, such as lounge areas, bathrooms, and, in some instances, kitchens.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Governments > Courts > Judicial Precedent

HN9 **Search & Seizure, Scope of Protection**

The occupant of a dormitory room enjoys the same Fourth Amendment protections from unreasonable searches and seizures as other citizens have in their private home. An intermediate appellate court must follow the binding precedent of the Texas Court of Criminal Appeals. Because a decision of the court of criminal appeals is binding precedent, intermediate appellate courts are compelled to comply with its dictates.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Criminal Law & Procedure > ... > Search Warrants > Probable Cause > Particularity Requirement

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

Criminal Law & Procedure > Search & Seizure > Search Warrants > Particularity Requirement

HN10[] Search & Seizure, Scope of Protection

To comply with the Fourth Amendment, a search warrant must describe the place to be searched and the items to be seized with sufficient particularity to avoid the possibility of a general search. Tex. Code Crim. Proc. Ann. art. 18.01(c). The particularity requirement of the Fourth Amendment prevents general searches, while at the same time assuring the individual whose property is being seized and searched of both the lawful authority and limits of the search itself. The constitutional objectives of requiring a particular description of the place to be searched include: 1) ensuring that the officer searches the right place; 2) confirming that probable cause is, in fact, established for the place described in the warrant; 3) limiting the officer's discretion and narrowing the scope of his search; 4) minimizing the danger of mistakenly searching the person or property of an innocent bystander or property owner; and 5) informing the owner of the officer's authority to search that specific location.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

HN11[] Search & Seizure, Scope of Protection

A warrant and supporting affidavit satisfies the Fourth Amendment when it recites facts sufficient to show: (1) that a specific offense has been committed; (2) that the property or items to be searched for or seized constitute or contain evidence of the offense or evidence that a particular person committed it; and (3) that the evidence sought is located at or within the thing to be searched. Tex. Code Crim. Proc. Ann. art. 18.01(c). The recited facts in the affidavit must be sufficient to justify a conclusion that the object of the search is probably within the scope of the requested search at the time the warrant is issued.

Criminal Law & Procedure > ... > Standards of Review > Harmless & Invited Error > Definition of Harmless & Invited Error

Criminal Law & Procedure > ... > Standards of Review > Harmless & Invited Error > Harmless Error

HN12[] Harmless & Invited Error, Definition of Harmless & Invited Error

Constitutional errors are reversible unless the appellate court determines the error did not contribute to the conviction or punishment beyond a reasonable doubt. Tex. R. App. P. 44.2(a). Non-constitutional errors are reversible if they affected a defendant's substantial rights. Tex. R. App. P. 44.2(b). A substantial right is affected when the error had a substantial and injurious effect or influence in determining the jury's verdict. An error had a substantial and injurious effect or influence if it substantially swayed the jury's argument. In determining whether error had a substantial and injurious effect or influence on the verdict, we must review the error in relation to the entire proceeding. If the appellate court, after examining the record as a whole, has fair assurance that the error did not influence the jury, or had but a slight effect, the error is harmless. If the appellate court is unsure whether the error affected the outcome, that court should treat the error as harmful.

Judges: Before Chief Justice Gray, Justice Davis, and Justice Neill.

Opinion by: JOHN E. NEILL

Opinion

MEMORANDUM OPINION

In two issues, appellant, Samuel Crawford ***Patterson***,

challenges his convictions for two counts of unlawful possession of a controlled substance. *See* Tex. Health & Safety Code Ann. § 481.1151, 481.116 (West 2017). Specifically, ***Patterson*** contends that the trial court abused its discretion by overruling his first amended motion to suppress evidence. We reverse and remand.

I. Background

In the very early morning hours of August 20, 2016, something was amiss during a fraternity party at the Signa Nu ***Fraternity House*** located on 550 Fraternity Row in College Station, Texas. Several 911 calls were made to report the possible heroin overdose of a Sigma Nu fraternity brother later identified as Anton Gridnev. The 911 calls made clear that illegal drugs were present at the ***fraternity house*** and that the fraternity brothers did not want the police involved. Nevertheless, emergency medical technicians, as well as law enforcement, soon arrived.

Sergeant Steven Taylor of the College Station Police Department was the first police officer to arrive at the **[*2]** house. Two paramedics were already on the scene tending to Gridnev, who was lying motionless just inside the doorway of the ***fraternity house***. As the scene unfolded, law enforcement discovered that Gridnev was deceased. There was evidence that suggested that Gridnev's body had been moved from inside the house to the doorstep. Because law enforcement was unsure at the time as to whether Gridnev himself had overdosed or if someone else had overdosed Gridnev, the entire ***fraternity house*** was treated as a murder scene.

Police proceeded to conduct three warrantless "sweeps" of the ***fraternity house***. First, several officers conducted what was characterized as a "protective sweep" to ensure that all of the fraternity brothers were out of their rooms and were in the common areas of the house so that law enforcement could determine if anyone else had overdosed or needed medical treatment and to ensure that evidence was not destroyed. This first "sweep" was not described as overly thorough. A second "sweep," which officers characterized as departmental policy, was conducted to ensure, once again, that all the fraternity brothers were accounted for and present in the common areas of the house.

During **[*3]** the initial two "sweeps" for the occupants in the house, law enforcement noticed illegal drugs and drug paraphernalia in plain view within the rooms. According to Officer Christopher Herring of the College Station Police Department, this included "drug paraphernalia, grinders, lots of pipes, bongs, and then also that I had seen white, powdery substance consistent with cocaine" in multiple rooms. As noted in the affidavit supporting the search warrant, ***Patterson***, in particular, had in his room, in plain view, a "coffee table: two small plastic baggies with white colored residue, white powdery substance arranged in a line." No witness testified as to whether the door to ***Patterson***'s room was closed or locked when the drug evidence was observed.

During a third "sweep," Investigator John Reilly Garrett of the College Station Police Department was escorted through the ***fraternity house*** to observe illegal drugs and drug paraphernalia in plain view in the common areas and the rooms. He detailed this information in his affidavit to secure a search warrant of the entire premises.

Based on the evidence seized from his room at the ***fraternity house***, ***Patterson*** was charged by indictment with one count **[*4]** of unlawful possession of less than one gram of a controlled substance—3,4-methylenedioxy methamphetamine—in Penalty Group 2 and one count of unlawful possession of a less than twenty abuse units of a controlled substance—lysergic acid diethylamide—in Penalty Group 1A. ***Patterson*** filed an original and a first amended motion to suppress evidence. The trial court conducted a hearing on ***Patterson***'s first amended motion to suppress, as well as motions to suppress from five other co-defendants. After the hearing, the trial court denied ***Patterson***'s motion to suppress.

Thereafter, ***Patterson*** entered an open plea of guilty and elected for punishment to be assessed by the trial court. In each count, the trial court assessed punishment at two years' incarceration in the State Jail but probated the sentence for five years with various conditions described in the judgments. The sentences were ordered to run concurrently. The trial court certified ***Patterson***'s right of appeal, and this appeal followed.

II. Standard of Review

HN1[] We review the trial court's ruling on a motion to suppress evidence for an abuse of discretion, using a bifurcated standard. *See* Crain v. State, 315 S.W.3d 43, 48 (Tex. Crim. App. 2010); Guzman v. State, 955 S.W.2d 85, 88-89 (Tex. Crim. App. 1997). We give "almost total deference" to the trial **[*5]** court's findings

of historical fact that are supported by the record and to mixed questions of law and fact that turn on an evaluation of credibility and demeanor. *Guzman, 955 S.W.2d at 89*. We review de novo the trial court's determination of the law and its application of law to facts that do not turn upon an evaluation of credibility and demeanor. *Id.* When the trial court has not made a finding on a relevant fact, we imply the finding that supports the trial court's ruling, so long as it finds some support in the record. *State v. Kelly, 204 S.W.3d 808, 818-19 (Tex. Crim. App. 2006)*; *see Moran v. State, 213 S.W.3d 917, 922 (Tex. Crim. App. 2007)*. We will uphold the trial court's ruling if it is reasonably supported by the record and is correct under any theory of law applicable to the case. *State v. Dixon, 206 S.W.3d 587, 590 (Tex. Crim. App. 2006)*.

HN2[↑] When ruling on a motion to suppress evidence, the trial judge is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given their testimony. *Wiede v. State, 214 S.W.3d 17, 24-25 (Tex. Crim. App. 2007)*. When reviewing a trial court's ruling on a motion to suppress, we view all the evidence in the light most favorable to the ruling. *Garcia-Cantu v. State, 253 S.W.3d 236, 241 (Tex. Crim. App. 2008)*.

III. The Particularity Requirement for Search Warrants

In his second issue, ***Patterson*** contends that the trial court abused its discretion by denying his first amended motion to suppress because the search warrant was facially invalid, **[*6]** and because it did not describe, with sufficient particularity, his room within the ***fraternity house***.

At trial and on appeal, the parties dispute whether ***Patterson*** has standing to challenge the search of his room at the ***fraternity house***. Because it is a threshold matter, we must initially address the standing issue before addressing ***Patterson***'s particularity argument.

HN3[↑] To challenge a search and seizure under the United States Constitution, the Texas Constitution, or the Texas Code of Criminal Procedure, a party must first establish standing. *Pham v. State, 324 S.W.3d 869, 874 (Tex. App.—Houston [14th Dist.] 2010, pet. ref'd)* (citing *Villarreal v. State, 935 S.W.2d 134, 138 (Tex. Crim. App. 1996)*). The defendant who challenges the search has the burden to establish standing. *See State v. Betts, 397 S.W.3d 198, 203 (Tex. Crim. App. 2013)*; *see also Villarreal, 935 S.W.2d at 138*.

HN4[↑] A defendant may establish standing through an expectation-of-privacy approach or an intrusion-upon-property approach. *See State v. Bell, 366 S.W.3d 712, 713 (Tex. Crim. App. 2012)* (citing *United States v. Jones, 565 U.S. 400, 132 S. Ct. 945, 949-50, 181 L. Ed. 2d. 911 (2012)*); *Williams v. State, 502 S.W.3d 254, 258 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd)* (citing *Florida v. Jardines, 569 U.S. 1, 133 S. Ct. 1409, 1414, 185 L. Ed. 2d 495 (2013)*; *Jones, 132 S. Ct. at 949-51*; *State v. Huse, 491 S.W.3d 833, 839-40 (Tex. Crim. App. 2016)*). In the instant case, the focus is on whether ***Patterson*** has a legitimate expectation of privacy in his room at the ***fraternity house***.

HN5[↑] Regarding the search of a dormitory room, the Court of Criminal Appeals has stated:

> The *Fourth Amendment* guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]" *U.S. Const. amend. IV*. The central concern underlying the *Fourth Amendment* **[*7]** has remained the same throughout the centuries; it is the concern about giving police officers unbridled discretion to rummage at will among a person's private effects. *State v. Granville, 423 S.W.3d 399, 405 (Tex. Crim. App. 2014)*. A *Fourth Amendment* claim may be raised on a trespass theory of search (one's own personal effects have been trespassed), or a privacy theory of search (one's own expectation of privacy was breached). *Ford v. State, 477 S.W.3d 321, 328 (Tex. Crim. App. 2015)*. If the government obtains information by physically intruding on persons, houses, papers, or effects, a trespass search has occurred. *United States v. Jones, 565 U.S. 400, 404-05, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012)*. If the government obtains information by violating a person's reasonable expectation of privacy, regardless of the presence or absence of a physical intrusion into any given enclosure, a privacy search has occurred. *Florida v. Jardines, 569 U.S. 1, 133 S. Ct. 1409, 1417, 185 L. Ed. 2d 495 (2013)*; *Kyllo v. United States, 533 U.S. 27, 40, 121 S. Ct. 2038, 150 L. Ed. 2d 94 (2001)*. A search, conducted without a warrant, is per se unreasonable, subject to certain "jealously and carefully drawn" exceptions." *Georgia v. Robinson, 547 U.S. 103, 109, 126 S. Ct. 1515, 164 L. Ed. 2d 208 (2006)*.

HN6[↑] The physical entry of the home is the chief evil against which the wording of the *Fourth Amendment* is directed. *Welsh v. Wisconsin, 466*

> U.S. 740, 748, 104 S. Ct. 2091, 80 L. Ed. 2d 732 (1984)*. Of course, *Fourth Amendment* protections of the "home" are not limited to houses. While a landlord may have limited authority to enter to perform repairs, a landlord does not have the general authority to consent to a search of a tenant's private living space. *Maxwell v. State, 73 S.W.3d 278, 282 n.3 (Tex. Crim. App. 2002)* (citing *Chapman v. United States, 365 U.S. 610, 81 S. Ct. 776, 5 L. Ed. 2d 828 (1961)*). Nor may a hotel clerk validly consent to the search of a room that has been rented to a customer. *Maxwell, id.* (citing *Stoner v. California, 376 U.S. 483, 84 S. Ct. 889, 11 L. Ed. 2d 856 (1964)*).

Rodriguez v. State, 521 S.W.3d 1, 8-9 (Tex. Crim. App. 2017).

The *Rodriguez* Court then concluded,

> And, ***HN7***[⬆] as a general matter, "'[a] dormitory room is analogous to an apartment or a hotel room.'" *Piazzola* [*v. Watkins*], 442 F.2d [284], 288 [(5th Cir. 1971)] (quoting *Com. v. McCloskey, 217 Pa. Super 432, 272 A.2d 271, 273 (Pa. Super Ct. 1970)*). "'It certainly offers its occupant a more reasonable expectation of freedom from governmental intrusion than does a public telephone booth.'" *Id.* Courts have widely agreed that a dorm room is a home away from home. Dorm personnel can—by virtue of contract—enter dorm rooms and examine, without a warrant, the personal effects of students that are kept there in order to maintain a safe and secure campus, **[*8]** or to enforce a campus rule or regulation; the students nevertheless enjoy the right of privacy and freedom from an unreasonable search or seizure. *See Grubbs [v. State], 177 S.W.3d [313], 318 [(Tex. App.—Houston [1st Dist.] 2005, pet. ref'd)]*; *People v. Superior Court, (Walker) 143 Cal. App. 4th 1183, 1209, 49 Cal. Rptr. 3d 831 (Cal. Ct. App. 2006)*; *Beauchamp v. State, 742 So. 2d 431, 432 (Fla. Dist. Ct. App. 1999)*; *Com. v. Neilson, 423 Mass. 75, 666 N.E.2d 984, 985-86 (Mass. 1996)*; *Morale v. Grigel, 422 F. Supp. 988, 997 (D.N.H. 1976)*; *Smyth v. Lubbers, 398 F. Supp. 777, 786 (W.D. Mich. 1975)*; *People v. Cohen, 57 Misc. 2d 366, 292 N.Y.S.2d 706, 713 (Dist. Cr. 1968)*, aff'd, *61 Misc.2d 858, 306 N.Y.S.2d 788 (Sup. Ct. 1969)*. The student is the tenant, the college the landlord. As the court of appeals put it: "Appellee enjoyed the same *Fourth Amendment* protection from unreasonable searches and seizures in her dormitory room as would any other citizen in a private home." *Rodriguez [v. State], [529 S.W.3d 81, 88 (Tex. App.—Eastland 2015)*, *aff'd*, *521 S.W.3d 1 (Tex. Crim. App. 2017)]*.

Id. at 9.

In our analysis of the standing issue, we are tasked with determining whether ***Patterson*** has a privacy interest in his room at the ***fraternity house***. Similar to the situation in *Rodriguez*, we believe that ***Patterson*** enjoyed the same *Fourth Amendment* protection from unreasonable searches and seizures in his room at the ***fraternity house*** as would any other citizen in a private room or a college dormitory room.

HN8[⬆] Both a dorm room and a room at a ***fraternity house*** are considered to be a home away from home for the college students that occupy the rooms. *See id.* Both have shared community spaces, such as lounge areas, bathrooms, and, in some instances, kitchens. Additionally, both a typical dorm room and the rooms at the Signa Nu ***fraternity house*** have doors that can be locked, **[*9]** which allow the occupants to exclude others. Furthermore, the record in this case depicts the enormity of the Sigma Nu ***fraternity house*** that has multiple levels, several community spaces for recreational activities and group meetings, a large kitchen with multiple ovens and refrigerators and freezers, and approximately twenty-five separate rooms occupied by college students. In other words, the Signa Nu ***Fraternity House*** more closely resembles that of a dorm, rather than a single-residence home. Therefore, because the Sigma Nu ***Fraternity House*** more closely resembles the dormitory described in *Rodriguez*, we conclude that ***Patterson*** had a reasonable expectation of privacy in his room at the ***fraternity house***. *See id. at 8-9*. And as such, we further conclude that ***Patterson*** has standing to challenge the search of his room at the Sigma Nu ***Fraternity House***. *See Betts, 397 S.W.3d at 203*; *Villarreal, 935 S.W.2d at 138*; *see also Pham, 324 S.W.3d at 874*.

The State argues that the ***fraternity house*** should be treated more like a single-family residence because the leases that ***Patterson*** and the other tenants at the ***fraternity house*** signed do not reference a particular room. Instead, the leases merely state that ***Patterson*** and the other fraternity brothers were leasing the property located **[*10]** at 550 Fraternity Row, College Station, TX 77845 (the Sigma Nu ***Fraternity House***). While the nature of the leases in this case might be some indicia of a single residence, we do not think it is

dispositive of the issue considering all of the similarities listed above between a dormitory and the ***fraternity house***.

The State also makes an argument that the Sigma Nu Fraternity members refer to themselves as brothers and have chosen to live together in a single residence—the Sigma Nu ***Fraternity House***. We are not persuaded by this argument either. Many college students choose particular dormitories to live with their friends, and as noted in *Rodriguez*, the decision to live together in a dormitory does not somehow eliminate the students' privacy interests in their dorm room. *See* 521 S.W.3d at 9. The same should be true for rooms in a ***fraternity house***.

Additionally, the State relies on several cases from the federal courts in an attempt to characterize the Sigma Nu Fraternity brothers as roommates living in a single residence. *See United States v. McLellan, 792 F.3d 200, 212-13 (1st Cir. 2015)*, *cert. denied*, *577 U.S. 980, 136 S. Ct. 494, 193 L. Ed. 2d 360, 2015 U.S. LEXIS 7145 (U.S., Nov. 9, 2015)*; *United States v. Werra, 638 F.3d 326, 332-33 (1st Cir. 2011)*; *Reardon v. Wroan, 811 F.2d 1025, 1027 n.2 (7th Cir. 1987)* (noting that "fraternity members could best be described as 'roommates in the same house,' not simply co-tenants sharing certain common areas").

First, we note **[*11]** that none of these cases are binding precedent on this Court. Further, we also emphasize that each of the cases cited by the State are factually distinguishable from the case at bar, as none of them involved privacy interests in a large ***fraternity house*** like the Sigma Nu ***Fraternity House***.[1] And finally, we recognize that there is federal authority that undercuts the holdings in *McLellan* and *Werra*. *See, e.g., United States v. Anderson, 533 F.2d 1210, 1214, 175 U.S. App. D.C. 75 (D.C. Cir. 1976)* (holding that "appellant's constitutionally protected privacy interest began at the door to [his] room . . . rather than at the door to the entire rooming house").

Based on the foregoing, we conclude that there exists no rational reason to distinguish privacy interests between a dormitory room and a room at the Sigma Nu ***Fraternity House***. Accordingly, we hold that ***Patterson*** had a reasonable expectation of privacy in his room at the Sigma Nu ***Fraternity House***. With that in mind, we now address ***Patterson***'s particularity argument as it pertains to the search warrant executed in this case.

HN10[↑] To comply with the *Fourth Amendment*, a search warrant must describe the place to be searched and the items to be seized with sufficient particularity to avoid the possibility **[*12]** of a general search. *Thacker v. State, 889 S.W.2d 380, 389 (Tex. App.—Houston [14th Dist.] 1994, pet. ref'd)*; *see Tex. Code Crim. Proc. Ann. art. 18.01(c)*. The particularity requirement of the *Fourth Amendment* prevents general searches, while at the same time assuring the individual whose property is being seized and searched of both the lawful authority and limits of the search itself. *Groh v. Ramirez, 540 U.S. 551, 561, 124 S. Ct. 1284, 157 L. Ed. 2d 1068 (2004)*.

> "The constitutional objectives of requiring a 'particular' description of the place to be searched include: 1) ensuring that the officer searches the right place; 2) confirming that probable cause is, in fact, established for the place described in the

---

[1] The *McLellan* Court, in particular, placed emphasis on the fact that a living space that had no separate entrance to the street and did not have a separate mailbox was more closely related to a single-unit residence. *See United States v. McLellan, 792 F.3d 200, 213 (1st Cir. 2015)*, *cert. denied*, ***577 U.S. 980, 136 S. Ct. 494, 193 L. Ed. 2d 360, 2015 U.S. LEXIS 7145 (U.S., Nov. 9, 2015)*** (holding that 180 High Street was a single-unit residence based on the following factors: (1) the room was not equipped for independent living; (2) there was no separate entrance to the street; (3) occupants had joint access to the common areas, such as the kitchen and living room; and (4) there were no separate doorbells or mailboxes). Neither a dormitory room nor a room at a ***fraternity house*** usually has a separate entrance to the street or outside. Furthermore, neither a dormitory room nor a room at the Sigma Nu ***Fraternity House*** had separate mailboxes for each room. Rather, in both instances, mail is delivered to a centralized location within the residential unit. Moreover, both occupants of a dormitory and those of a ***fraternity house*** have joint access to common areas, such as kitchens, living rooms, and bathrooms. Additionally, the Court of Criminal Appeals has held that ***HN9***[↑] the occupant of a dormitory room enjoys the same *Fourth Amendment* protections from unreasonable searches and seizures as other citizens have in their private home. *See Rodriguez v. State, 531 S.W.3d 1, 8-9 (Tex. Crim. App. 2017)*; *see also McKinney v. State, 177 S.W.3d 186, 192 (Tex. App.—Houston [1st Dist.] 2005)*, *aff'd*, *207 S.W.3d 366 (Tex. Crim. App. 2006)* (stating that an intermediate appellate court must follow the binding precedent of the Court of Criminal Appeals); *State v. Stevenson, 993 S.W.2d 857, 867 (Tex. App.—Fort Worth 1999 no pet.)* ("Because a decision of the court of criminal appeals is binding precedent, we are compelled to comply with its dictates."). We see no reason why ***Patterson***'s room at the Sigma Nu ***Fraternity House*** should be treated dissimilarly to a dormitory room.

> warrant; 3) limiting the officer's discretion and narrowing the scope of his search; 4) minimizing the danger of mistakenly searching the person or property of an innocent bystander or property owner; and 5) informing the owner of the officer's authority to search that specific location."

Long v. State, 132 S.W.3d 443, 447 (Tex. Crim. App. 2004).

HN11[↑] A warrant and supporting affidavit satisfies the *Fourth Amendment* when it recites facts sufficient to show: (1) that a specific offense has been committed; (2) that the property or items to be searched for or seized constitute or contain evidence of the offense or evidence that a particular person committed it; and (3) that the evidence sought is located at or within the thing to be searched. *Sims v. State, 526 S.W.3d 638, 645 (Tex. App.—Texarkana 2017, no pet.)*; *see Tex. Code Crim. Proc. Ann. art. 18.01(c)*. The recited facts in **[*13]** the affidavit must be "sufficient to justify a conclusion that the object of the search is probably [within the scope of the requested search] at the time the warrant is issued." *State v. Delagarza, 158 S.W.3d 25, 26 (Tex. App.—Austin 2005, no pet.)*.

In the instant case, the affidavit supporting the search warrant described the place to be searched as follows:

> A multi-story, multi-wing residence building located at 550 Fraternity Row, College Station, Brazos County, Texas. The residence is known as the Sigma Nu ***Fraternity house*** and sits on the northeast corner of the Fraternity Row and Deacon Drive intersection. The exterior consists of light beige siding and light beige colored brick. The main wing consists of a two story structure, with an open balcony with a wrought iron railing running the full length of the front of the building. There is a doorway located in the center. There are two large sized, multi-paned windows to both the right and left side of this doorway. Each window is further described as having dark brown shutters to either side. The lower level holds the main entrance, also centered in the building, with two large sized, multi-paned windows to both the right and left side of this doorway. The front of the residence building has six, **[*14]** individual, brick pillars which reach from the ground to the top of the second story. These pillars are made of beige colored brick. The two center most pillars are adorned with lighting sconces which are positioned near the center of the pillar, height wise. Centered on the second level and attached to the wrought iron railing are the two large, Greek letters for Sigma and Nu, which are dark brown in color surrounded by a white outline. Directly below these letters, the numbers "550" are affixed. The main entrance into the residence building faces towards the southwest and consists of two wooden doors which open outwards. The doors are painted maroon in color; with the right side door having a brown metal, latch style door knob with an attached electronic key pad positioned on the left side of the door. Above the door latch is a brown metal keyhole for a deadbolt style locking mechanism. The attached wing is also two storied and made up of beige colored brick. It is positioned on the northwest side of the main building. The southwest facing side of the attached wing hold four individual windows, two on each level, which consist of multi-paned windows and dark brown colored shutters **[*15]** to each side. Said Suspected Place also includes locations outside of the residence, such as garages, outbuildings, boxes, and other vehicles parked within the curtilage of Said Suspected Place.

The search warrant incorporated the affidavit for all purposes; thus, the description of "Said Suspected Place" in the search warrant mirrors that of the affidavit.

On appeal, ***Patterson*** argues that the description of "Said Suspected Place" to be searched was insufficient because the particularity requirement of the *Fourth Amendment* mandated a description of his room within the ***fraternity house*** structure. We agree.

As shown above, neither the affidavit in support of the search warrant nor the search warrant itself identified ***Patterson***'s room within the Sigma Nu ***Fraternity House***—Room 216—as a place to be searched. Because we have held that society is prepared to recognize that ***Patterson*** has a reasonable expectation of privacy in his room within the Sigma Nu ***Fraternity House***, we conclude that the description of the place to be searched in this case violated the particularity requirement of the *Fourth Amendment of the United States Constitution*. *See Tex. Code Crim. Proc. Ann. art. 18.01(c)*; *Thacker, 889 S.W.2d at 389*; see also *Sims, 526 S.W.3d at 645*; *Delagarza, 158 S.W.3d at 26*. The description of the place to be searched in this case—the entire Sigma Nu ***Fraternity House***—was **[*16]** too broad and, thus, was deficient as a general warrant. We therefore conclude that the trial court abused its discretion by denying ***Patterson***'s motion to suppress evidence seized from his room within the Sigma Nu ***Fraternity House*** on this basis. *See Crain, 315 S.W.3d*

at 48; see also Guzman, 955 S.W.2d at 88-89. Accordingly, we sustain **Patterson**'s second issue.[2]

We next address whether the trial court's error is reversible. HN12[⬆] Constitutional errors are reversible unless the appellate court determines the error did not contribute to the conviction or punishment beyond a reasonable doubt. Tex. R. App. P. 44.2(a). Non-constitutional errors are reversible if they affected a defendant's substantial rights. Id. at R. 44.2(b). Even assuming the lower threshold of non-constitutional error, we conclude that harm is present.

"'A substantial right is affected when the error had a substantial and injurious effect or influence in determining the jury's verdict.'" Thomas v. State, 505 S.W.3d 916, 926 (Tex. Crim. App. 2016) (quoting King v. State, 953 S.W.2d 266, 271 (Tex. Crim. App. 1997)). An error had a substantial and injurious effect or influence if it substantially swayed the jury's argument. In determining whether error had a substantial and injurious effect or influence on the verdict, we must review the error in relation to the entire proceeding. Haley v. State, 173 S.W.3d 510, 518 (Tex. Crim. App. 2005). "[I]f the appellate court, after **[*17]** examining the record as a whole, has fair assurance that the error did not influence the jury, or had but a slight effect," the error is harmless. Johnson v. State, 967 S.W.2d 410, 417 (Tex. Crim. App. 2018). If the appellate court is unsure whether the error affected the outcome, that court should treat the error as harmful. Webb v. State, 36 S.W.3d 164, 183 (Tex. App.—Houston 14th Dist.] 2000, pet. ref'd).

Based on the record before us, we cannot say with fair assurance that the erroneous admission of the drug evidence from **Patterson**'s room based on a defective search warrant did not affect **Patterson**'s substantial rights. This evidence was crucial in this case, and because the drug evidence was not suppressed by the trial court, **Patterson** was induced to enter a guilty plea in this case. Under these circumstances, we conclude that the trial court's error in not suppressing the drug evidence in this case was harmful, and as such, we must reverse **Patterson**'s conviction.

[2] Because we have sustained **Patterson**'s second issue, which affords him the relief of suppression of the evidence contained in his room within the Sigma Nu **Fraternity House**, we need not address his first issue, which challenged the propriety of law enforcement's three "sweeps" of the entire house, including each of the twenty-five private rooms, without a warrant.

IV. Conclusion

Having concluded that the trial court erred by denying **Patterson**'s motion to suppress and that the error was harmful, we reverse the judgment of the trial court and remand for proceedings consistent with this opinion.

JOHN E. NEILL

Justice

Before Chief Justice Gray,

Justice Davis, and

Justice Neill

Reversed and remanded

Opinion delivered **[*18]** and filed December 9, 2020

Do not publish

End of Document